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in finding that the sale of whisky by defendant's employee was within the scope of his employment, and had been authorized by the defendant.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 36.]

**3. Intoxicating Liquors (§ 168\*)—Employer Who Authorized Employee to Sell Whisky Guilty of Selling Ardent Spirits.**—Where restaurant employee with authority from employer sold whisky, the employer was guilty of selling ardent spirits, being responsible for the criminal act of his employee.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 17.]

**4. Criminal Law (§ 1173 (5)\*)—Modification of Defendant's Requested Instruction as to Testimony of Paid Detectives Held Not Prejudicial to Defendant.**—In prosecution for selling ardent spirits, modification of defendant's requested instruction, requiring testimony of paid detectives, which invites the commission of crime, to be closely scrutinized, held not prejudicial to defendant, being more favorable than the original request.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 734.]

Error to Hustings Court of Portsmouth.

William R. Walker was convicted of selling ardent spirits, and he brings error. Affirmed.

*S. M. Brandt* and *R. T. Thorp*, both of Norfolk, for plaintiff in error.

*John R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and Leon M. Bazile, Second Asst. Atty. Gen.,* for the Commonwealth.

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GRAY *v.* COMMONWEALTH.

March 16, 1922.

[111 S. E. 276.]

**1. Jury (§ 70(1)\*)—Jurors Summoned to Try Felony Case May Be Used in Trial of Misdemeanor Case, Notwithstanding Method of Impaneling Jury for Trial of Misdemeanor Cases Provided for by Statute.**—Under Code 1919, § 4895, jurors summoned to try a felony and in attendance upon the courts may be used in the trial of a misdemeanor case, tried at the same term, notwithstanding §§ 5992 and 5993, providing method for impaneling jurors for trial of misdemeanor cases.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 22.]

**2. Criminal Law (§ 338 (3)\*)—Testimony that Witness Bought Liquor at Certain Place Admissible against Defendant with Other Evidence that Defendant Was Real Owner Thereof.**—In prosecution for selling ardent spirits, testimony that witness bought liquor at a certain restaurant purporting to be in charge of a person other than the defendant, held admissible as against defendant, in view of other tes-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

timony showing that the defendant was the real owner of the restaurant, and that name of such other person as manager thereof was a blind.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 36.]

Error to Hustings Court of Portsmouth.

L. L. Gray was convicted of selling ardent spirits, and he brings error. Affirmed.

*S. M. Brandt* and *R. T. Thorp*, both of Norfolk, for plaintiff in error.

*John R. Saunders*, Atty. Gen., *J. D. Hank, Jr.*, Asst. Atty. Gen., and *Leon M. Bazile*, Second Asst. Atty. Gen., for the Commonwealth.

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NORFOLK & W. RY. CO. *v.* HENDERSON.

March 16, 1922.

[111 S. E. 277.]

**1. Railroads (§ 378\*)—Instruction on Duty to Child on Track Approved.**—In an action for the death of a child struck by a railroad train, where defendant's engineer testified he saw the child in time to have stopped, but did not recognize it as a child, an instruction that, if the defendant's servants used reasonable care to prevent the accident as soon as they discovered, or by ordinary care would have discovered, the object to be a child, would more accurately define the defendant's duty if the word "probably" was inserted before the words "a child."

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 714.]

**2. Trial (§§ 228 (1), 230\*)—Numerous and Lengthy Instructions Should Be Avoided unless Necessary.**—Concise and clear instructions submitting the particular issue to the jury are to be commended, since instructions which are numerous and lengthy are often not comprehended by the jurors, and are not useful to them, and should be avoided unless they are necessary by reason of the number of issues involved or the varied aspects of the case.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 716.]

**3. Railroads (§ 407 (7\*))—Amendment to Instruction on Care to Discover Child on Track Held Properly Refused.**—Where the court instructed the jury that, if defendant's engineer saw an object upon the track which by the exercise of ordinary care he could and would have discovered to be a child in time to have avoided striking it, and failed to do so, the defendant was liable, it was not error to refuse an amendment to the instruction that defendant was not liable for an error of judgment in the engineer in failing to identify the object as a child.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 412.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.